

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

E.A. SWEEN COMPANY, a Minnesota Corporation,)	Civil Action No.: 2:06-cv-15536
)	Judge: The Honorable George Steeh
)	
Plaintiff,)	
)	
vs.)	
)	
MIKE'S DELI EXPRESS, INC., a Michigan Corporation,)	
)	
)	CONSENT JUDGMENT AND PERMANENT
Defendant.)	INJUNCTION
)	

Plaintiff, E.A. SWEEN COMPANY d/b/a DELI EXPRESS ("E.A. Sween Company"), commenced this action with the filing of its Complaint against Defendant MIKE'S DELI EXPRESS INC. d/b/a MIKE'S TIRPLE GRILL a/k/a MIKE'S TRIPLE GRILLE, INC ("Mike's Deli") on December 13, 2006. E.A. Sween Company asserted the following claims against Mike's Deli: (a) trademark infringement in violation of Lanham Act § 32, 15 U.S.C. § 1114 (2006); (b) federal unfair competition in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a) (2006); (c) dilution in violation of Lanham Act § 43(c), 15 U.S.C. § 1125(c) (2006); (d) unfair, unconscionable, and deceptive trade practices in violation of MICH. COMP. LAWS §§ 445.903 Sec. 3(1)(a), 445.903(1), (2); (e) unfair competition in violation of Michigan common law; and (f) trademark infringement in violation of Michigan common law. Mike's Deli was properly served with the Summons and Complaint, and has not filed or served a responsive pleading.

Having consulted with counsel, Mike's Deli now stipulates and consents to this Consent Judgment and Permanent Injunction, to its prompt entry by the Court, and to each and every provision, order, and decree contained herein.

NOW THEREFORE, upon consent of the parties hereto, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. The Court has subject matter and personal jurisdiction over this action and the parties under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and under the laws of the State of Michigan. Venue is proper in this district under 28 U.S.C. § 1391, in that Mike's Deli is doing business and may be found in this district, and that a substantial part of the events and omissions giving rise to the claims herein have occurred in this district.

2. Mike's Deli acknowledges Plaintiff E.A. Sween Company's ownership of and the validity of E.A. Sween Company's DELI EXPRESS® trademarks and service marks and the validity of its federal registrations; namely, U.S. Reg. Nos.: 1,220,359; 1,265,869; 1,273,109; 1,280,049; 2,544,922; 2,591,258; 2,759,045; 2,859,981; 2,886,261; 2,910,324; 2,962,330; 3,152,283; 3,160,638; 3,167,639; 3,167,640; 3,167,641; 3,188,263; and 3,188,270 ("the DELI EXPRESS® Marks.") Mike's Deli further acknowledges and agrees that use of the mark DELI EXPRESS in connection with the retail sale of sandwiches and food products and/or the catering business, and advertising of the mark prominently and in connection with artistic depictions of sandwiches and food products constitutes an infringement of E.A. Sween Company's DELI EXPRESS® Marks and the above-identified federal registrations.

3. Mike's Deli, and its partners, officers, agents, servants, representatives, employees, shareholders and successors, and all other persons in

active concert or participation with Mike's Deli or any of them, shall be and are hereby permanently enjoined and restrained from all of the following:

- a. Doing business under the name "DELI EXPRESS;"
- b. Using, in any manner, the term "DELI EXPRESS" and/or any confusingly-similar designation alone or in combination with other words or designs as a trademark, trade name component, or otherwise, to market, advertise, or identify any product and/or service not produced, offered, or authorized by E.A. Sween Company;
- c. Using, in any manner, the "DELI EXPRESS" trademarks or any mark confusingly similar to the DELI EXPRESS® Marks in connection with Mike's Deli's goods or services in such a manner that is likely to create the erroneous belief that the goods or services are authorized by, sponsored by, licensed by, or are in any manner associated with E.A. Sween Company;
- d. Otherwise infringing upon the DELI EXPRESS® Marks;
- e. Unfairly competing with E.A. Sween Company in any manner whatsoever;
- f. Causing likelihood of confusion, injury to business reputation, or dilution of the distinctiveness of the DELI EXPRESS® Marks;
- g. Committing any other act or making any other statement which infringes E.A. Sween Company's trademarks and service marks, or constitutes an active trademark or service mark infringement, trademark dilution, or unfair competition under federal common law, or the common law of the State of Michigan.
- h. Conducting business with, including, but not limited to, selling any sandwiches or other food products to any person, firm or entity that Mike's Deli knows or has reason to believe is engaged in any of the following:
 - i. Doing business under the name "DELI EXPRESS;"
 - ii. Using, in any manner, the term "DELI EXPRESS" and/or any confusingly-similar designation alone or in combination with other words or designs as a trademark, trade name component, or otherwise, to market, advertise, or identify any product and/or service not produced, offered or authorized by E.A. Sween Company;
 - iii. Using, in any manner, the DELI EXPRESS® Marks in connection with any such person's, firm's, or entities' goods or services in such a manner that is likely to create the erroneous belief that the goods or services are authorized by, sponsored by, licensed by, or are in any manner associated with E.A. Sween Company;

4. Within 14 days after Mike's Deli signs this Consent Judgment and Permanent Injunction, Mike's Deli shall destroy any materials displaying the DELI EXPRESS mark or any other mark confusingly similar with the DELI EXPRESS® Marks.

5. Within 14 days after the issuance of this Consent Judgment and Permanent Injunction, Mike's Deli shall deliver to E.A. Sween Company, through the offices of its attorneys: Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402, Attn: Bradley J. Walz, a written and sworn verification that it has: (a) changed the name of its business utilizing DELI EXPRESS to something other than DELI EXPRESS and the DELI EXPRESS® Marks; (b) destroyed all signage, advertising material, or other material bearing DELI EXPRESS or some other designation confusing similar to the DELI EXPRESS® Marks; and (c) notified all publishers of telephone directories, if any, including all such telephone directories on the Internet, that their respective publications must reflect the name change in the next edition (whether in the white pages, yellow pages, or both) of such telephone directory or directories.

6. Each party shall pay its own attorneys' fees that have accrued on or before the execution of this Consent Judgment and Permanent Injunction.

7. If Mike's Deli breaches any term of this Consent Judgment and Permanent Injunction, Mike's Deli shall be responsible to pay E.A. Sween Company \$10,000.00 in liquidated damages to help defray the portion of the costs to E.A. Sween Company incurred in connection with this Action to stop Mike's Deli's infringement of the DELI EXPRESS® Marks. Mike's Deli shall also be responsible

to reimburse E.A. Sween Company its reasonable attorneys' fees and costs incurred in connection with any future enforcement of this Consent Judgment and Permanent Injunction.

8. This Court shall retain jurisdiction over this Consent Judgment and Permanent Injunction, and any applications with regard to enforcement of it shall be directed to this Court.

CONSENT TO ENTRY

The parties and their respective counsel hereby stipulate and consent to the terms and conditions of this Consent Judgment and Permanent Injunction as set forth herein and consent to the entry hereof. This Consent Judgment and Permanent Injunction may be executed in one or more counterparts, each of which when so executed shall, together, constitute and be one in the same instrument.

Dated: March 20, 2007

s/George Caram Steeh
U.S. DISTRICT JUDGE

s/with consent of Harrell D. Milhouse

Dated this 8th day of March, 2007

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s/Michael J. Barton

Dated this 19th day of March, 2007

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